85-1396

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

Supreme Court of the United States

October Term, 1985

William B. Royster,

Petitioner,

v.

Board of Trustees of Anderson County School District No. 5, Tony Turner, Edward W. Morgan, W. Frank Kellam, and A. Fred Stringer, Jr., as members of the Board of Trustees of Anderson County School District No. 5 and as individuals,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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William B. Royster

February 19, 1986

QUESTIONS PRESENTED

1. Do 42 U.S.C. § 1983 and the Due Process Clause permit an entity of the State to injure the reputation of its employee, and cause other serious damages, by publicly discharging him in violation of his contract and his hearing right, and then avoid a damage claim by paying the employee the salary under the contract?

2. When state law gives a government employee, in addition to the right to a specified salary, the right to remain in his job without a material change in duties, may a federal court refuse to protect from deprivation without a hearing anything more than the right to receive salary?

PARTIES

The Appellee in the proceeding in the Court of Appeals was William B. Royster. The Appellants in the Court of Appeals were the Board of Trustees of Anderson County School District No. 5, Tony Turner, Joe O. Bolt, Edward W. Morgan, W. Frank Kellam, and A. Fred Stringer, Jr., as members of the Board and as individuals. (Defendants Ann W. Huitt, Brenda H. Goelz, Cynthia W. Williford, and Carol H. Floyd were dismissed as parties before trial by order of the District Court dated March 16, 1984. The Anderson County School District No. 5 was dropped as a named defendant at the end of the trial. The caption of the case in the Court of Appeals was never corrected to reflect these changes.)

TABLE OF CONTENTS

Page

Questions Presented i

Parties ii

Table of Contents iii

Table of Authorities iv

Opinions Below 1

Jurisdictional Statement 2

Constitutional and Statutory Provisions Involved 2

Statement of the Case 3

Reasons for Granting the Writ

I. The Fourth Circuit's Decision Negates the "Compensation Principle" of *Carey v. Piphus;* the Court Nullifies *Carey* by Ignoring its Obligation Under *Board of Regents v. Roth* to Rely on a State Law Source for the Property Right 6

II. The Decision of the Court of Appeals Conflicts With *Carey v. Piphus* Because it Fails to Permit Full Compensation for Injuries Proved to Have Been Caused by the Violation of Procedural Due Process 9

III. The Decision of the Fourth Circuit Conflicts With the Decision of the Sixth Circuit in *Stachura v. Truszkowski* and With the Decision of a Texas District Court 11

IV. The Decision of the Fourth Circuit Conflicts With *Perry v. Sindermann* and *Logan v. Zimmerman Brush Co.* Because it Nullifies a Damage Award for Injury to Interests Which Those Decisions Have Found to be Protected by Property 12

V. The Decision of the Fourth Circuit Negates Important Protections Conferred on School Administrators and Public Employees Generally by "For Cause" Contractual Clauses and Other Statutory Provisions 13

Conclusion 15

Appendix A

Order of the District Court Denying Motions for Judgment Notwithstanding the Verdict or, in the Alternative, for New Trial A-1

Opinion of the Court of Appeals (Original Decision) A-8

Order of the Court of Appeals Denying Petition for Rehearing A-15

Judgments of the Court of Appeals ... A-17

Appendix B

Petitioner's Employment Contract B-1

Model Superintendent's Contract (Joint Publication of the American Association of School Administrators and the National School Boards Association) B-10

Newspaper Articles B-20

TABLE OF AUTHORITIES

Page

Cases

Board of Regents v. Roth, 408 U.S. 564 (1972) ... 6,7,8,15

Busche v. Burkee, 649 F.2d 509 (7th Cir.), *cert. denied*, 454 U.S. 897 (1981) 10

Cannon v. Beckville Independent School District, 709 F.2d 9 (5th Cir. 1983) 7

Carey v. Piphus, 435 U.S. 247 (1978) 6,7,9,10,15

Cleveland Board of Education v. Loudermill, ____ U.S. ____, 105 S.Ct.1487 (1985) 9

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982).. 12

Perry v. Sindermann, 408 U.S. 593 (1972).....8,12

Robinson v. Houston-Galveston Area Council, 566 F. Supp. 370 (S.D. Tex. 1983) 11,12

Stachura v. Truszkowski, 763 F.2d 211 (6th Cir.) *cert. granted sub nom., Memphis Community Schools v. Stachura*, 54 U.S.L.W. 3278 (U.S. Oct 22, 1985) (No. 85-410) 11,15

Tracey v. Sconnix Broadcasting of South Carolina, Inc., 284 S.C. 379, 325 S.E. 2d 542 (1985) 4,6,7,8

Constitutional Provision

U.S. Const., Amend. XIV, § 1 2

Statutory Provision

42 U.S.C. § 1983 2,3,5

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner, William B. Royster, respectfully prays that a writ of certiorari issue to review the judgments and opinion of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The unreported opinion of the United States District Court for the District of South Carolina denying Respondents' motions[1] for judgment notwithstanding the verdict or, in the

[1]One post-trial motion was filed by the Board of Trustees of Anderson County School District No. 5 and the Board members in their official capacities. A separate motion was filed by the Board members in their

alternative, for new trial appears in Appendix A hereto (App. A-1 to A-7).

The opinion of the Court of Appeals for the Fourth Circuit on original decision is reported at 774 F. 2d 618 and appears in Appendix A (App. A-8 to A-14).

JURISDICTIONAL STATEMENT

The judgments of the Court of Appeals were dated and entered on October 3, 1985, and on December 3, 1985. A timely petition by Royster for a rehearing *en banc* was denied by order dated November 21, 1985. This petition for certiorari is filed within 90 days of that date. The Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution, which states, in pertinent part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law....

U.S. Const., Amend. XIV, § 1.

Title 42, United States Code § 1983, which states, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

42 U.S.C. § 1983.

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individual capacities. Separate appeals to the Court of Appeals also were taken by the two defendant groups. This petition addresses the Court of Appeals opinion disposing of both appeals.

STATEMENT OF THE CASE

Petitioner, William B. Royster, brought this action under 42 U.S.C. § 1983 to recover damages from the School District and Respondents Board of Trustees and individual Board members because they terminated him as Superintendent in a manner which violated his contract and his right to due process, and which caused him emotional and professional injuries. The jury concluded that Royster had suffered substantial injury and award him $75,000 actual and $3,000 punitive damages. The Court of Appeals for the Fourth Circuit reversed. The Fourth Circuit held that Respondents had fully satisfied their constitutional obligation to Royster by continuing to pay his salary after terminating him and, therefore, were not liable under § 1983.

Royster served as Superintendent under a contract which guaranteed that he would not be discharged except "for cause" and only after notice and an opportunity for a hearing. (For text of discharge-for-cause provision of Petitioner's contract, see Appendix B hereto, App. B-7.) The model superintendent contract on which Royster's contract was based included a provision permitting the school district to terminate the superintendent unilaterally on 90-days notice with his remaining salary paid as severance pay. (For text of unilateral termination-with-pay provision of model contract, see App. B-18.) That provision, however, was deleted from Royster's contract during the negotiations between Royster and the Board (Rec. p. 96).[2]

In addition to its "for cause only" termination provision, Royster's contract specified his rights and duties as Superintendent. The contract stated that Royster would be "the chief executive officer of the Board" and would direct and assign teachers and other employees of the District. It obligated the Board to refer promptly "all criticisms, complaints, and suggestions" to Royster for study and recommendation (App. B-2). The contract gave Royster "the

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[2]"Rec." followed by a number(s) refers to the appropriate page number(s) of the Joint Appendix filed with the Court of Appeals.

right to attend all Board meetings and all Board and citizens committee meetings, serve as an ex-officio member of all School Board committees, and provide adminstrative recommendations on each item of business considered by each of these groups" (App. B-2). The contract also provided that Royster would have release time and receive reimbursement for "travel and subsistence expenses" (App. B-3).[3]

Royster's contract with the Board did not expire until June 30, 1983 (App. B-9). Under state law Royster had a right to expect to continue to serve as Superintendent until his contract expired. The terms of the contract guaranteed his job unless he engaged in conduct "seriously prejudicial" to the District (App. B-7). Under the law of South Carolina, the contract gave Royster the right to continue to perform his duties and to hold himself out as "the superintendent," in addition to his right to a specified salary. *Tracey v. Sconnix Broadcasting of South Carolina, Inc.*, 284 S.C. 379, 325 S.E. 2d 542 (1985) (an employee under contract to fill a particular position is constructively discharged and has a claim for damages when his job title and duties are materially changed even though he receives equivalent or higher salary).

Respondents, however, ignored Royster's rights under his contract and undermined his legitimate expectations. Following a change in the composition of the Board, the Board on the night of January 11, 1983, voted to terminate Royster immediately even though there were six months left on his contract. The Board made no attempt to follow the for-cause procedures of the contract in taking its action.

Royster was not present at the meeting when the Board discharged him. He was at the time confined to his home on doctor's orders prior to back surgery. The Board informed Royster of its decision at once in a late night telephone call to him at home even though, as the Board knew, he was under

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[3]When it suggested in dictum that one might persuasively argue that, under the terms of the contract, the Board had the right to control the duties of the Superintendent at all times, the Fourth Circuit misread the contract (App. A-14).

instructions to avoid any controversy prior to his operation (Rec. pp. 109, 115, 251). That same night, an interim superintendent was hired to replace Royster, and Royster was relieved of all authority (Rec. p. 118). The next day newspapers carried headlines stating that Royster had been "relieved," "dismiss[ed]," and "fire[d]" (Rec. p. 119).(For text of newspaper articles, see App.B-20 to B-23.)[4] Two days later all of Royster's personal and professional possessions in his office were boxed and removed (Rec. pp. 131-132).

The Board was aware that it was violating Royster's contract in terminating him and so stipulated at trial (Board's brief on appeal, p. 1). The Board attempted, however, to avoid any claim for damages by paying Royster the salary which his contract required. One Board member testified that an attorney had advised the Board "that if we lost the court suit because of [the termination] that what we would lose is what we would have already paid him" (Rec. p. 209). Although the Board labeled its action a "relieving of duties" with pay, the Board actually terminated Royster as if his contract had included the type of unilateral termination-with-pay provision contained in the model contract but eliminated from Royster's contract.

Royster sued because the salary he received did not compensate him for the damage to reputation, emotional distress, and other injuries he suffered as a result of his termination. At trial, Respondents contended that, even though they had violated the contract, Royster was not entitled to anything more than he already had received, *i.e.*, his salary. Both the trial court and the jury rejected Respondents' argument. At the conclusion of the trial, the district court directed a verdict of liability in Royster's favor on the contract and § 1983 claims and instructed the jury on the various elements of damages it could consider in reaching its

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[4]In the only official statement which the Board issued regarding its actions, it was stated that "the board has been advised by its attorney to make no comment regarding Dr. Royster's release due to the sensitive nature of this matter and the possibility of litigation" (App. B-23). Royster contended this statement was more than a simple "no comment," that, instead, references to "sensitive nature of this matter" and "possibility of litigation" damaged his reputation.

verdict. Those elements included injury to reputation as well as mental and emotional distress (Rec. p. 378).

Royster offered uncontradicted evidence that the improper manner in which he was discharged made it more difficult for him to find a new job than if his contract simply had been allowed to expire (Rec. pp. 279-280). He also demonstrated that the harsh and callous manner of his termination caused him mental and emotional distress (Rec. p. 117, 127). The jury concluded that Royster had suffered actual damage amounting to $75,000.

The Court of Appeals, however, ignored Royster's right to full damages under *Carey v. Piphus*, 435 U.S. 247 (1978), and held that Royster was entitled to nothing more than his salary. It concluded that "any constitutionally protected property interest Royster had as a result of his employment contract has been satisfied by payment of the full compensation due under the contract" (App. A-14). The Fourth Circuit chose to overlook Royster's state law right under *Tracey* to retain his contractual duties. It erroneously insisted that Royster had not been deprived of any right conferred by state law and protected by the Constitution. The Court of Appeals ruled that, because he received his salary, Royster had suffered no denial of due process and was not entitled to any damages under § 1983.

REASONS FOR GRANTING THE WRIT

I. THE FOURTH CIRCUIT'S DECISION NEGATES THE "COMPENSATION PRINCIPLE" OF *CAREY V. PIPHUS;* THE COURT NULLIFIES *CAREY* BY IGNORING ITS OBLIGATION UNDER *BOARD OF REGENTS V. ROTH* TO RELY ON A STATE LAW SOURCE FOR THE PROPERTY RIGHT

The decision of the Fourth Circuit conflicts in a fundamental way with *Carey v. Piphus*, 435 U.S. 247 (1978), in which this Court rejected the notion of "presumed" damages but held that a plaintiff may recover compensatory damages for a procedural due process violation when he can prove actual injuries caused in fact by the violation. Royster proved actual

injuries caused by his unconstitutional termination, and the jury awarded compensatory damages for those injuries. The Fourth Circuit overturned the damage award, contrary to *Carey,* by narrowly defining the property right created by Royster's employment contract so as to encompass only a right to receive salary under the contract. Contrary to *Board of Regents v. Roth,* 408 U.S. 564 (1972), the Fourth Circuit chose to overlook the state law source of the right, which clearly gave Royster an interest in the position itself, and, improperly "federalizing" the property interest inquiry, concluded by its own rule that Royster received all that he could legitimately claim when he was paid his salary.[5]

In *Roth,* 408 U.S. at 577, the Court stated that property interests are created and their dimensions defined by existing rules or understandings which stem from an independent source such as state law. In *Tracey v. Sconnix Broadcasting of South Carolina, Inc.,*[6] the Supreme Court of South Carolina held that a contract of employment gives an employee a legal right to his job title and the duties of his position, as specified in his contract. If the job title or duties are materially changed,

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[5]The Fourth Circuit found support for its holding in *Cannon v. Beckville Independent School District,* 709 F.2d 9 (5th Cir. 1983), because the superintendent was paid his salary under the contract and denied recovery for damages. The court misconstrued the facts in *Cannon,* however, when it stated that the superintendent was removed from office while his contract was "still unexpired" (App. A-14). The issue in *Cannon* was whether the superintendent had a property right based on a claimed extension of his contract for one year. The Fifth Circuit concluded that the district court was clearly erroneous in finding that *Cannon* had a legitimate expectation that his contract had been extended and, therefore, held that there was no property right based on the claim of contract extension. 709 F.2d at 10. Because Cannon was paid his full salary under the expired contract and sued on his property claim for lost wages for the extension year, the court properly denied recovery after resolving the legitimacy of the claim of the extension against the plaintiff. *Cannon* thus was a case where the court determined that there was no property right present, not a case where the issue related to the nature or content of a property right found to exist.

[6]The *Tracy* case had not been decided at the time Royster filed his brief on appeal. The decision was brought to the attention of the Court of Appeals during the rehearing stage.

the employee is constructively discharged and has available a right of action for damages. Moreover, as the State Supreme Court pointed out in *Tracey*, it makes no difference that the employee would have earned the same or greater salary after the material change in duties. 284 S.C. at 381, 325 S.E. 2d at 554.

Thus, *Tracey* is a clear state law source for a legitimate claim of entitlement, and, therefore, a constitutional property right, in remaining in the position with materially unchanged duties, whether or not the salary of the position is paid.

The Fourth Circuit indicated that Royster failed to direct the court to any authority giving him the right to "physically possess" his job (App. A-13). The court appears to confuse the concept of property interest under *Roth* with possible limits on remedies in contract actions under state law. At one point in its opinion, the Fourth Circuit even refers to Royster as having a "property interest in his *contractual* right to expectation of continued employment..." (App. A-12) (emphasis added).

Viewing Royster's constitutional right more like a contract right, the Fourth Circuit seems to ask "can Royster, even though the contract has been breached, point to any authority giving him the right to compel the Board to let him occupy the position?" The court, however, was mistaken in its search for authority establishing a right to the remedy of specific performance when it had been referred to *Tracey* as the source for a right in the position itself. Royster never has sought specific performance; he sought damages for injuries which resulted from the deprivation, without due process, of his right to the position. By applying its own narrow concept of property, as being limited to salary, the Fourth Circuit, contrary to *Roth* and *Tracey*, defined away the substantive right upon which the damages were based.

In addition to overlooking *Tracey*, the Fourth Circuit ignored a "mutually explicit understanding," *see Perry v. Sindermann*, 408 U.S. 593, 601 (1972), of the parties that Royster was not subject to being terminated unilaterally with payment of salary, again violating *Roth*. The mutual understanding that Royster would not be "bought out" was based on deletion during contract negotiations of the

contractual provision which would have permitted unilateral termination with payment of the amount due under the contract. Coupled with the contractual discharge-only-for-cause provision, the mutual understanding that the Board did not have a "buy out" option created a legitimate expectation that Royster would not be removed, except "for cause."[7]

II. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH *CAREY V. PIPHUS* BECAUSE IT FAILS TO PERMIT FULL COMPENSATION FOR INJURIES PROVED TO HAVE BEEN CAUSED BY THE VIOLATION OF PROCEDURAL DUE PROCESS

The Fourth Circuit concluded that Respondents' constitutional obligation to Royster had been "satisfied by payment of the full compensation due under the contract" (App. A-14). The reason advanced by the court for its conclusion is that, otherwise, an employer would be unable "to relieve the employee from his duties although willing to compensate the employee *in full*" (App. A-13) (emphasis added). The fallacy with this reasoning is that, although Royster has been paid his salary, he has not been compensated "in full," as *Carey* requires.

As the Court of Appeals recognized, Royster had a "legitimate expectancy in continued employment" (App. A-13) based on his contract until that contract expired on June 30, 1983. The Board destroyed that expectation when it "relieved" Royster on January 11, 1983, without procedural

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[7]The decision of the Fourth Circuit is also at odds with *Cleveland Board of Education v. Loudermill*, ____ U.S. ____, 105 S.Ct. 1487 (1985), in which this Court emphatically rejected the "bitter with the sweet" approach to the creation of property rights, under which rights are defined by, and conditioned on, the State's choice of procedures for their deprivation. The Fourth Circuit's decision effectively allows the State to compel an employee, through an involuntary "buy out," to relinquish his due process right to a pre-deprivation hearing, thus resurrecting the "bitter with the sweet" approach. Under *Loudermill* a State cannot deprive a person of a property right, without some kind of prior hearing. The Fourth Circuit's decision improperly permits the Board, by unilateral termination without a hearing, to effect a relinquishment of Royster's property right by paying salary only.

due process. Under *Carey*, Royster is entitled to recover for all actual injuries proved to have resulted from the unconstitutional deprivation.

The Fourth Circuit, again, was misled into believing that it was important to ask whether, under state law, Royster had "the right to actively engage in and execute the duties of his office" (App. A-13) against the wishes of his employer. *Cf. Carey*, 435 U.S. at 258 ("[t]he purpose of § 1983 would be defeated if injuries caused by the deprivation of constitutional rights went uncompensated simply because the common law does not recognize an analogous cause of action"). Royster's lawsuit did not attempt to compel the Board to permit him to remain on the job; it sought full damages for the injuries Royster suffered when he was terminated without notice or hearing. In *Carey* this Court made clear that general damages are recoverable for procedural due process violations. Regrettably, however, the Fourth Circuit's decision precludes this possibility altogether.

Royster established to the jury's satisfaction that he suffered actual damages as a result of the unilateral termination of his contract and job. He introduced evidence of the publicity which resulted from the Board's actions and showed how that publicity adversely affected his personal and professional reputation (App. B-20 to B-23; Rec. pp. 279-280). Reputational injuries are compensable in a procedural due process case. *See Busche v. Burkee*, 649 F. 2d 509, 519 & n. 13 (7th Cir. 1981) (injury to reputation caused by foreseeable publicity of unlawful termination properly considered as an element of damages), *cert. denied*, 454 U.S. 897 (1981). Royster also established that he suffered mental and emotional distress because of the harsh and callous manner in which he was terminated and then informed of the decision. These injuries also are compensable under *Carey*, 435 U.S. at 262.

In short, the decision of the Fourth Circuit is in direct and fundamental conflict with *Carey* because it denies Royster fair compensation for injuries he proved were caused by his termination without due process.

III. THE DECISION OF THE FOURTH CIRCUIT CONFLICTS WITH THE DECISION OF THE SIXTH CIRCUIT IN *STACHURA V. TRUSZKOWSKI* AND WITH THE DECISION OF A TEXAS DISTRICT COURT

The decision of the Fourth Circuit conflicts with the decision in *Stachura v. Truszkowski*, 763 F. 2d 211 (6th Cir.1985), *cert. granted sub nom., Memphis Community Schools v. Stachura*, 54 U.S.L.W. 3278 (U.S. Oct. 22, 1985) (No. 85-410), in which the Court of Appeals for the Sixth Circuit upheld a jury verdict against a school district for damages to a teacher's reputation and professional career based on adverse public statements surrounding the teacher's suspension with pay. While *Stachura* also involved other constitutional claims, it is clear from the questions presented in the school district's petition for writ of certiorari to this Court that damages for reputational injury were awarded based on a taking of "property" even though the teacher's removal from the position was with pay. Thus, the second question presented to the Court in the certiorari petition stated: "Whether the Court of Appeals erred by concluding that a suspension with pay coupled with adverse statements regarding that suspension consitutes a deprivation of property within the meaning of the Fourteenth Amendment." This Court denied certiorari of that question. *Memphis Community Schools v. Stachura*, 54 U.S.L.W. 3278 (U.S. Oct. 22, 1985) (No. 85-410).

Under *Stachura*, what is protected as "property" includes more than the interest in receiving salary. Reputational interests also are shielded. The Fourth Circuit in the instant case reached a different conclusion. There is no doubt that if the appeal in the present case had been to the Sixth Circuit, Royster's damage award would have been sustained. When the petition for certiorari was filed in *Stachura*, there was no conflict in the circuits. With the ruling of the Fourth Circuit in *Royster*, a conflict has been created which now should be resolved by this Court.

The decision of the Fourth Circuit also conflicts with *Robinson v. Houston-Galveston Area Council*, 566 F. Supp.

370 (S.D. Tex. 1983), where the court stated:

> This finding of a property interest is not affected by the fact that plaintiffs received no monetary compensation for their work. It is clear from *Roth* and its progeny that the determination of an interest as a "property" interest turns upon the finding of a claim of...entitlement to a benefit, rather than on the economic value of the benefit itself....

Id. at 376. Thus, *Robinson* emphasizes that the determination of "property" depends not on the economic value of the benefit but on the scope of the entitlement to the benefit, as determined by the underlying source of the right. In equating "property" with monetary benefit, the Fourth Circuit conflicts with *Robinson*.

IV. THE DECISION OF THE FOURTH CIRCUIT CONFLICTS WITH *PERRY V. SINDERMANN* AND *LOGAN V. ZIMMERMAN BRUSH CO.* BECAUSE IT NULLIFIES A DAMAGE AWARD FOR INJURY TO INTERESTS WHICH THOSE DECISIONS HAVE FOUND TO BE PROTECTED BY PROPERTY

The Fourth Circuit overturned damages awarded by the jury for injuries to interests of a kind which this Court has stated are protected under the rubric of "property." Before rendering its verdict, the jury was instructed on injury to reputation, emotional and mental distress, humiliation, and other injuries (Rec. p. 378). These are elements of damages for injuries to interests which this Court has indicated may be protected as "property."

In *Sindermann*, the Court remarked: "'Property' interests subject to procedural due process protection are not limited by a few rigid, technical forms. Rather, 'property' denotes a broad range of interests that are secured by 'existing rules or understandings.'" 408 U.S. at 601 (citations omitted). Similarly, in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), the Court stated:

> The hallmark of property...is an individual entitlement grounded in state law which cannot be removed except "for cause." Once that characteristic is found,

> the types of interests protected as "property" are varied, and, as often as not, intangible, relating "to the whole domain of social and economic fact."

Id. at 430 (citations omitted).

This Court, therefore, has made it clear that the interests which are protected by property, especially property created by for-cause protections, are broad in range and relate "to the whole domain of social and economic fact." It follows from the pronouncements of the Court in *Sindermann* and *Logan* that the intangible economic and social interests shielded by property encompass the right to be free from injury to reputation and infliction of mental and emotional distress. The Fourth Circuit's decision thus is in conflict not only with *Carey* but also with *Logan* and *Sindermann*.

V. THE DECISION OF THE FOURTH CIRCUIT NEGATES IMPORTANT PROTECTIONS CONFERRED ON SCHOOL ADMINISTRATORS AND PUBLIC EMPLOYEES GENERALLY BY "FOR CAUSE" CONTRACTUAL CLAUSES AND OTHER STATUTORY PROVISIONS

There are hundreds, if not thousands, of school superintendents who have contracts nearly identical to Royster's because his contract was based on the model contract published jointly by the American Association of School Administrators and the National School Boards Association. (For text of Royster's contract and AASA/NSBA model, see App. B-1 to B-19.) In addition, literally millions of public employees in this country have entered into employment contracts with discharge-for-cause provisions or similar protections under state civil service or tenure laws. The decision of the Fourth Circuit, if applied generally, would operate to deprive all those employees of their legitimate expectations that their for-cause protections are enforceable. If the decision in this case is allowed to stand, none of those public employees will have any assurance that their employment will continue absent "cause."

If a school board can oust the superintendent for any reason as long as it is willing to use the words "relieve from duties" and pay remaining salary, superintendents will have

no way to protect themselves from emotional and professional harm like that which was inflicted upon Royster. Any capable superintendent who falls into political disfavor could be discharged, and no matter what his contract says, given only a few months' pay, yet forced to bear substantial mental, emotional and professional injury.

Contracts like Royster's, which can be terminated only "for cause," create an expectation of more than a continued stream of income. They are designed to give superintendents, and other public employees, the job security which makes it more likely that they will be effective administrators or employees. A superintendent with a termination for-cause contract expects that he will be able to hold himself out to prospective employers and the world as "the superintendent" and to continue to receive the other non-monetary benefits of that status (aside from the pleasure of performing his job) for the length of his contract.

Royster's contract stated that the District had entered into the contract "to enhance administrative stability and continuity within the schools which District believes generally improves the quality of its overall educational program" and "to describe specifically their relationship" (App. B-1). Ultimately, the decision of the Fourth Circuit fosters instability in the public employer-employee relationship because that relationship depends on settled expectations and balanced interests which the court's decision disrupts. In the final analysis, therefore, the Fourth Circuit's decision has implications for the State's interests as well as for those of its employees.

Royster was entitled to assume that he would remain in his position and continue to receive all benefits from his job unless there was some "cause" for his termination. He was to have substantial protection from the changing whims of a politically chosen school board. The decision of the Fourth Circuit deprives Royster and many other public employees of this important bargained-for and earned protection.

CONCLUSION

The decision of the Fourth Circuit amounts to a frontal assault on the compensation principle of *Carey*, which is carried out through a failure to follow the dictates of *Roth*. The Fourth Circuit has overturned damages proved to have been caused by a termination without notice or opportunity to be heard. In so doing, the Fourth Circuit has overlooked a state law source for the property interest which created a right to remain in the position. By ignoring state law, the federal appeals court applied a rule that the right to continued employment is merely a right to continued salary. By limiting the property right to what Royster had already received, the Fourth Circuit eliminated the substantive basis for the jury's damage award and left Royster uncompensated for injuries he proved were caused in fact by his unlawful termination. The decision of the Court of Appeals conflicts with the Sixth Circuit's recent decision in *Stachura v. Truszkowski*. The decision of the Fourth Circuit also has serious implications for all public employees who heretofore have had legitimate expectations that their for-cause protections offer some degree of job security and shield from actions by their employers which are professionally and personally damaging.

For these reasons, this Court should grant certiorari, and the judgment below should be reversed.

Respectfully submitted,

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February 19, 1986

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

William B. Royster,	)	
	)	CIVIL ACTION NO. 83-1544-14
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
Board of Trustees of Anderson County School District Number Five; Tony Turner, Joe O. Bolt, Edward W. Morgan, W. Frank Kellam, and A. Fred Stringer, Jr., as Members of the Board of Trustees of Anderson County School District Number Five and as Individuals,	)	
Defendants.	)	

This matter is before the Court upon Defendants' motions for judgement notwithstanding the verdict or, in the alternative, for a new trial. The motions are denied.[1]

I.

Defendant Board of Trustees contracted for many years with Plaintiff to serve as Superintendent of School District Number Five. In September, 1982, the school board voted not to renew Plaintiff's contract which expired on June 30, 1983. The following month the board rescinded its September vote, deciding to consider the issue of contract renewal in January. On January 11, 1983, a majority of the board of trustees, including the individual Defendants, voted to terminate

[1]In denying these motions, the Court incorporates its reasons for denying Defendants' summary judgment motions as well as their motions during trial for a directed verdict.

Plaintiff immediately and elected a new superintendent to fill Plaintiff's unexpired term.

The parties' contract provided four specific grounds for termination during the term of the contract:

(1) Mutual agreement of the parties;
(2) Retirement of the superintendent;
(3) Disability of the superintendent; and
(4) Discharge for cause.[2]

Under the provision entitled "Discharge for Cause," the contract provides that notice of discharge for cause "shall be given in writing" to the superintendent, that the superintendent "shall be entitled to appear before the board to discuss [the] causes," and that the superintendent "shall be provided a written decision describing the results of the meeting [with the board regarding the discharge]."

It is undisputed that Plaintiff had no prior notice of the board's decision. In fact, the board's attorney met with Plaintiff during the afternoon of January 11 and conveyed the board members' message that they wanted him to retire early. Since Plaintiff was under a doctor's care awaiting surgery scheduled for January 14 in Atlanta, Georgia, he informed the board's attorney that additional time was necessary to make such an important decision. Aware of Plaintiff's medical condition, the board nevertheless voted that evening to terminate him effective immediately. The board's action was unquestionably final, for Plaintiff's office was promptly cleared out without his knowledge or permission and a new superintendent installed.

II.

After receiving his base salary for the remainder of the contract term, Plaintiff filed this action seeking damages under several causes of action, particularly 42 U.S.C. § 1983.

Defendants assert that Plaintiff has no Section 1983 due process claim. Defendants argue that: (1) Plaintiff had no property interest in continued employment; (2) Plaintiff was

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[2]Any resignation or termination outside these four specific grounds would constitute a breach of contract.

not discharged in accordance with the terms of his contract of employment and he therefore had no right to rely on the notice provisions of the contract; and (3) Plaintiff waived any right he may have had to due process and is now estopped from claiming a due process deprivation.

Defendants rely heavily on *Cannon v. Beckville Independent Sch. Dist.*, 709 F.2d 9 (5th Cir. 1983). Because a headnote preceding the *Cannon* decision is purportedly on all fours with Plaintiff's due process claim, counsel argues that Defendants are entitled to judgment as a matter of law. Defendants' reliance on *Cannon* is misplaced.

In 1976, Cannon was hired as superintendent through June 30, 1979. In 1978, Cannon, but not the school board, signed a contract extending his employment for an additional year, July 1, 1979 through June 30, 1980. The school board chose not to extend Cannon's contract. Moreover, Cannon was relieved of his superintendent's duties a few months prior to June 30, 1979, and paid *all* of his salary for the remainder of the contract term.

Cannon's Section 1983 action rested not on a property interest in continued employment through June 30, 1979, but rather was premised on a claim of continued employment from July 1, 1979 through June 30, 1980. In this regard, the Court of Appeals for the Fifth Circuit agreed with the school district that Cannon had no more than a unilateral expectation in continued employment for the fourth year, the 1979-1980 school year. The court agreed with the school district that "Cannon lacked any property interest in its employment after June 30, 1979." *Id.* at 10.[3]

Defendants claim Plaintiff had no property interest in employment with the school district *after* June 30, 1983. I agree. Plaintiff's property interest, however, come from a legitimate expectation of continued employment through June 30, not from a unilateral expectation of renewal. Indeed, Plaintiff,

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[3]Cannon's counsel's actions, as recited by the appellate court, demonstrate rather compellingly Cannon's reliance on continued employment for a fourth year: "The only correspondence from [Cannon's] attorney requested negotiations to settle Cannon's claim under the alleged extended contract [for the 1979-1980 school year]." *Id.* at 11.

unlike Cannon, never claimed a property interest in continued employment after June 30, for Plaintiff recognizes that his property interest existed only *during* the term of his contract.

Since Plaintiff's employment could be terminated before June 30 only pursuant to the contract's "discharge for cause" provision, he had a property interest in continued employment through June 30. "Ordinarily, a person who has been terminated during the *fixed period* of his or her employment as was the plaintiff here has a property right to [his] job *for that period* and may not be terminated during that period without a hearing." *Benfield v. Chester,* No. 83-1755, slip op. at 4 (4th Cir. May 8, 1984) (per curiam) (emphasis added) *citing Board of Regents v. Roth,* 408 U.S. 564, 567, 569-70 n.8 (1972).

Defendants argue that "[e]ven if the Plaintiff had a property interest in continuing his employment through June 30, 1983, if he was not discharged for cause, and there was no testimony that he was so discharged,[4] the procedural safeguards under the discharge for cause provision of the contract did not come into play." (Memorandum in support of Motion for Judgement N.O.V. or in the Alternative for a New Trial on behalf of the individual Defendants, filed May 3, 1984, 2.) This argument is without merit, for the due process clause, not the parties' contract, defines what process is constitutionally mandated when a property interest has been

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[4]Defendants are correct in stating that Plaintiff was not discharged for cause and the Court so ruled. Plaintiff was discharged without cause and paid only his base salary. In December, 1982, the board of trustees took initial steps to review Plaintiff's performance in accordance with the contract terms. In January, with new board members taking office, compliance with the contract was disregarded and Plaintiff was terminated.

Defense counsel conceded that in the event the Court found a breach as a matter of law, Plaintiff was entitled to 26 days of accrued leave together with an adjustment of his retirement benefits. *See Royster v. Board of Trustees of Anderson County School District Number Five,* No. 83-1544 (D.S.C. June 5, 1984). Having determined that Plaintiff had been terminated in contravention of the contract terms, the Court granted Plaintiff's motion for a directed verdict as to the issue of liability, leaving only the issue of contract damages.

created. "At a minimum, due process usually requires adequate notice of the charges and a fair opportunity to meet them." *Bowens v. North Carolina Department of Human Resources*, 710 F.2d 1015, 1019 (4th Cir. 1983). Since Plaintiff neither had notice of the charges nor an opportunity to meet them, whatever they were, he was not afforded due process.

Defendants also take exception to the direction of a verdict against them on the defenses of waiver and estoppel.[5] The gist of this argument is that Plaintiff is barred from recovery since he accepted his base salary through June 30 and failed to request a post-termination hearing. Mere acceptance of some benefits due under a contract does not constitute a bar to a tort action. Indeed, a plaintiff is under a duty to mitigate damages. *See Berry v. Macon County Board of Education*, 380 F.Supp. 1244, 1248 (M.D.Ala. 1971); *Newbern v. Lake Lorelei, Inc.*, 308 F.Supp. 407, 417 (S.D.Ohio 1968). Concerning the failure to request a hearing, it was incumbent upon the school board to provide Plaintiff with notice of the charges against him and an opportunity to be heard. Nevertheless, a post-termination hearing would have been futile, for the school board's decision to terminate was admittedly final.[6] The defenses of waiver and estoppel do not apply to this case.

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[5]Waiver is the intentional relinquishment or abandonment of a known right. No evidence was presented tending to show that Plaintiff waived any right except to the extent of his base salary which was paid to him through the term of his contract. The defense of estoppel required Defendants to prove, among other things, the element of detrimental reliance. Here, there was no such evidence.

[6]Again, *Cannon* lends Defendants no support. Cannon's failure to request a post-termination hearing was of no consequence since he had no right to due process in the first instance. The Court of Appeals for the Fifth Circuit apparently discussed Cannon's failure to request a hearing only because counsel on appeal had asserted Cannon's entitlement to damages *because of* the denial of a post-termination hearing. Plaintiff makes no such complaint.

III.

Defendants seek a new trial on the basis of the introduction into evidence of newspaper articles concerning Plaintiff's termination. It is claimed that the articles contained inadmissible hearsay and their probative value was outweighed by their prejudicial effect. The newspaper articles in question were not offered to prove the truth of the matter asserted. F.R.E. 801(c).[7] Moreover, the probative value of these articles was not substantially outweighed by the danger of unfair prejudice. F.R.E. 403. The articles were relevant and highly probative as injury to reputation is a compensable injury in a procedural due process action for wrongful termination. *See Busche v. Burkee*, 649 F.2d 509, 519 n.13 (7th Cir. 1981).

Defendants contend that the jury charge and the form of the verdict were objectionable in many respects although proper exception was taken to only a few of the assigned errors. Fed.R.Civ.P. 51. I have carefully reviewed all allegations of error and find the jury instructions, when considered piecemeal, as suggested by Defendants, or as a whole, correctly stated the applicable law. I also find the verdict form to be unexceptionable.

The Court's characterization of the board's actions as "improper" did not unfairly prejudice Defendants, for Defendants did indeed violate Plaintiff's right to due process. Concerning damages, the jury was carefully instructed that Plaintiff had the burden of proving that his damages, if any were proximately caused by the due process violation.

During deliberations, the jury inquired of the Court concerning Plaintiff and the state retirement system. Plaintiff's retirement benefits, of course, concerned only his breach of contract claim. With the parties' consent, the Court responded to the jury in writing not to consider Plaintiff's retirement benefits as an element of damages. Defendants were not prejudiced by the jury's initial confusion which was corrected by instructions approved by Defendants.

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[7]To the extent individual defendants made the statements attributed to them, which they did not deny, the statements were admissible under F.R.E. 801(d)(2)(A).

The Court instructed the jury as to both objective and subjective factors concerning the qualified immunity defense. This, Defendants maintain, ignores *Harlow v. Fitzgerald,* 457 U.S. 800 (1982), and its puported elimination of subjective factors in a qualified immunity defense. This Court reads *Harlow's* emphasis on objective factors as a means to facilitate summary adjudication in favor of public officials burdened by insubstantial claims. Consideration of subjective factors, however, is not ignored, particularly with claims that are not insubstantial and proceed to trial. *McElveen v. County of Prince William,* 725 F.2d 954, 957-58 (4th Cir. 1984). The jury's consideration of subjective factors was, therefore, proper.

Finding no basis on which to grant a motion for either a judgment n.o.v. or a new trial, Defendants' motions are denied.

AND SO IT IS ORDERED,

/s/ William W. Wilkins, Jr.
WILLIAM W. WILKINS, JR.
UNITED STATES DISTRICT JUDGE

Greenville, S.C.
June 22, 1984

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 84-1935

William B. Royster,

Appellee

versus

Board of Trustees of Anderson County School District Number Five; Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as members of the Board of Trustees of Anderson County School District Number Five; and Anderson County School District Number 5,

Appellants

and

Ann W. Huitt, Brenda H. Coelz, Joe O. Bolt, Cynthia W. Williford, Carol H. Floyd, as individuals,

Defendants

No. 84-1936

William B. Royster,

Appellee

versus

Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as individuals,

Appellants

and

Board of Trustees of Anderson
County School District Number Five;
Ann W. Huitt, Brenda H. Coelz,
Joe O. Bolt, Cynthia W. Williford,
Carol H. Floyd, as members of
the Board of Trustees of Anderson
County School District Number Five;
and Anderson County School District
Number 5,

Defendants

Appeals from theUnited States District Court for the District of South Carolina, at Anderson. William W. Wilkins, Jr., District Judge. (C/A 83-1544-14)

Argued April 2, 1985 Decided October 3, 1985

Before WIDENER and WILKINSON, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Bruce A. Byrholdt; Cary C. Doyle (C. Thomas Cofield, III; Doyle & Cofield; Chapman & King, on brief) for Appellants; Kenneth L. Childs (David T. Duff; Childs, Duff & St. Pierre, on brief) for Appellee.

WIDENER, Circuit Judge:

William Royster brought this action for damages under 42 U.S.C. § 1983 against the Board of Trustees for Anderson County School District #5 (Board), South Carolina, and the Trustees in their individual capacities, claiming a violation of due process rights as a result of Royster's termination as superintendent of Anderson County School District #5. In a trial to a jury, the district court directed a verdict for Royster and against the Board, finding that Royster's dismissal amounted to the taking of a property interest without due process of law in violation of the Fourteenth Amendment. The issue of damages and individual trustee liability was submitted to the jury, which awarded actual damages against the Board and four trustees and punitive damages against the four trustees. The Board and individual trustees appeal, and we reverse.

I

William Royster was the superintendent of Anderson County School District #5 from 1967 until January 11, 1983. During that period, Royster had been employed under a series of multi-year contracts which periodically had been renewed or extended. Royster's final employment contract was dated November 11, 1980, and orginally covered the two-year period from July 1, 1980 to June 30, 1982. In September, 1981, that contract was extended for an additional year, to June 30, 1983.

In September 1982, the Board voted not to renew Royster's contract beyond June 30, 1983. After a series of reconsiderations on Royster's employment status, the Board, on January 11, 1983, informed Royster that he was being relieved of his duties as superintendent effective immediately but with full pay and benefits through June 30, 1983, the effective termination date of his contract. Royster was given no reason for his removal, and the Board gave no reason in its public announcement of the decision. Between January 11, 1983 and June 30, 1983, Royster received and accepted, in monthly checks, the compensation owed to him under the contract.

In bringing this action, Royster also sought damages for

breach of contract, defamation, outrage, invasion of privacy and deprivation of a liberty interest under § 1983. Following motions for summary judgment, the claims of defamation, outrage and deprivation of a liberty interest were either dismissed or withdrawn, and are not now before us. The district court directed a verdict in favor of all defendants on the claim of invasion of privacy, and this is not an issue on appeal. On the breach of contract claim, the district court directed a verdict in favor of Royster, concluding that his dismissal constituted an improper discharge under the discharge for cause provisions of his employment contract. The Board stipulated that the district court assess damages for the breach, based on 26 days of unused annual leave. The Board has not appealed this decision.[1]

In directing a verdict for Royster on the due process claim, the district court determined that Royster's employment contract had created an expectation of continued employment through June 30, 1983, in turn establishing a constitutionally protected property interest subject to minimal due process under the Fourteenth Amendment. The court then concluded that in removing Royster from his position without adequate notice of the reasons and a fair opportunity to respond to them, the Board violated the notice and hearing requirements of the contract, constituting a taking of Royster's property interest without the minimally required due process.

Since we now decide that Royster had no constitutionally protected property interest, we need not address the other issues raised on appeal.

II

A public employee who is discharged without a hearing, and then seeks to invoke the protection of the due process clause of the Fourteenth Amendment, must first establish that he has been deprived of a liberty of property interest protected by that clause. *Board of Regents v. Roth*, 408 U.S. 564, 569-570 (1972); *Wooten v. Clifton Forge School Bd.*,

[1]The judgment of the district court does not take this sum into account, so we assume the sum has been paid or agreed arrangements for payment of the same have been made.

655 F. 2d 552, 554 (4th Cir. 1981); *Prince v. Bridges*, 537 F. 2d 1269, 1270-1271 (4th Cir. 1976). It is only when such interests exist that the State must afford a hearing. *Wooten v. Clifton Forge School Bd.*, 655 F. 2d at 554. Since the liberty interest claim is no longer in this case, we concern ourselves solely with Royster's allegation of a deprivation of a property interest.

The requirements for the establishment of a constitutionally protected property interest were set forth in *Board of Regents v. Roth*, 408 U.S. at 577:

> To have a property interest in a benefit [job], a person clearly must have more than an abstract desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

See *Prince v. Bridges*, 537 F. 2d at 1271. In order to determine the existence of such a legitimate claim of entitlement, we must look to "existing rules or understandings that stem from an independent source such as State law...." *Board of Regents v. Roth*, 408 U.S. at 577; see *Beckham v. Harris*, 756 F. 2d 1032, 1036 (4th Cir. 1985). In the context of employment in public education, the independent source for the property interest has been said to be a contract which provides for continued employment, and which can be terminated only for good cause. See *Wooten v. Clifton Forge School Bd.*, 655 F. 2d at 554. Thus, only where the employee has a legitimate entitlement to continued employment do the requirements of due process attach. See *Board of Regents v. Roth*, 408 U.S. at 577; *Beckham v. Harris*, 756 F. 2d at 1036.

The extent, if any, of consitutional protection afforded Royster's property interest in his contractual right to expectation of continued employment through June 30, 1983, under other circumstances, is a question we need not decide. See the language in *Wooten v. Clifton Forge School Board*, 655 F. 2d 552-554 (4th Cir. 1981); *Kilcoyne v. Morgan*, 664 F. 2d 940-942 (4th Cir. 1981); *Sigmon v. Poe*, 564 F. 2d 1093-1096 (4th Cir. 1977); and *Heath v. Fairfax Co.*, 550 F. 2d 959 (4th Cir. 1977). As earlier implied, the facts of

this case do not present ordinary circumstances. We have here a public employee with a contractual right to continued employment through June 30, 1983. On January 11, 1983, however, Royster was informed that he was being relieved of his duties as superintendent, but with full salary and benefits through the end of the contractual period. In response, Royster accepted the compensation.

This leaves the sole issue before us as whether Royster's property interest, i.e. the legitimate expectancy in continued employment, included not only the right to receive the compensation guaranteed under the contract, but also the right to actively engage in and execute the duties of his office. We recognize that the Board breached its contractual obligation in the procedure followed in Royster's release from duties. However, not every breach of a public employment contract amounts to a constitutional violation. See *Kilcoyne v. Morgan,* 664 F. 2d 940, 942 (4th Cir. 1981); *Sigmon v. Poe,* 564 F. 2d 1093, 1096 (4th Cir. 1977). In the present instance, careful consideration of the issue has persuaded us that Royster's contract afforded him only the right to be fully compensated, and not the right to occupy the office of superintendent.

Royster has directed us to no authority which supports the proposition that a property interest in the continued expectation of public employment includes the right to physically possess a job, in defiance of the stated desire of the employer; nor has our own review revealed such authority. Indeed, to hold that Royster had a constitutionally protected property interest in continuing to perform his services would make it impossible for a public employer, dissatisfied with an employee's performance, but without specific contractual cause to discharge him, to relieve the employee from his duties although willing to compensate the employee in full. This is a situation full of difficulty and one which has received no support from the South Carolina Court, the Supreme Court, nor the courts of appeals, including our own.[2]

We are convinced that any constitutionally protected property interest Royster had as a result of his employment contract has been satisfied by payment of the full compensation due under the contract.

Our holding here is supported by the Fifth Circuit's decision in *Cannon v. Beckville Independent School District*, 709 F. 2d 9 (5th Cir. 1983), involving facts not unlike those before us. In *Cannon*, a school superintendent was removed from office while his contract was still unexpired. As here, the school district in *Cannon* paid in full the plaintiff's remaining compensation under the contract, and the court found no property interest exsisted. Id. at 11. We find the holding in *Cannon* persuasive.

Accordingly, the judgment of the district court is

REVERSED.

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[2]It may be persuasively argued that, under the terms of the contract, the Board had the right to control the duties of the Superintendent at all times, including relieving him of any duty. If that be true, then Royster could maintain only a unilateral expectation with respect to being allowed to perform his duties, not a constitutionally protected property interest. *Board of Regents v. Roth*, p. 577. We need not rest our decision on that ground, however.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 84-1935

William B. Royster,

Appellee

versus

Board of Trustees of Anderson County School District Number Five; Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as members of the Board of Trustees of Anderson County School District Number Five; and Anderson County School District Number 5,

Appellants

and

Ann W. Huitt, Brenda H. Coelz, Joe O. Bolt, Cynthia W. Williford, Carol H. Floyd, as individuals,

Defendants

No. 84-1936

William B. Royster,

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versus

Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as individuals,

Appellants

and

Board of Trustees of Anderson
County School District Number Five;
Ann W. Huitt, Brenda H. Coelz,
Joe O. Bolt, Cynthia W. Williford,
Carol H. Floyd, as members of
Anderson County School District
Number Five; and Anderson County
School District Number 5,

Defendants

ORDER

The petition amicus curiae for rehearing and suggestion for rehearing en banc of the American Association of School Administrators, which is treated as a brief amicus curiae, is ORDERED to be filed.

There being no request for a poll of the court, it is accordingly ADJUDGED and ORDERED that the petition for rehearing en banc shall be, and it hereby is, denied.

The panel has considered the petition for rehearing and is of opinion it is without merit.

It is accordingly ADJUDGED and ORDERED that the petition for rehearing shall be, and it hereby is, denied.

Judge Russell did not participate in this decision.

With the concurrences of Judge Wilkinson and Judge Butzner.

/s/ J. Widener

For the Court

JUDGMENT

United States Court of Appeals

for the FOURTH CIRCUIT

No. 84-1935
C/A 83-1544-14

William B. Royster, Appellee,

v.

Board of Trustees of Anderson County School District Number Five; Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as members of the Board of Trustees of Anderson County School District Number Five; and Anderson County School District Number 5, Appellants,

and

Ann W. Huitt, Brenda H. Coelz, Joe O. Bolt, Cynthia W. Williford, Carol H. Floyd, as Individuals, Defendants,

Appeal from the United States District Court for the District of South Carolina

This cause came on to be heard on the record from the United States District Court for the District of South Carolina, ***and was argued by counsel.***

On consideration whereof, it is now here ordered and adjudged by this Court that the

judgement of the said District Court appealed from, in this cause, be, and the same is hereby,

Reversed.

/s/ John M. Greacen

CLERK

JUDGMENT

United States Court of Appeals

for the

FOURTH CIRCUIT

No. 84-1936
C/A 83-1544-14

William B. Royster, Appellee,

v.

Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as Individuals, Appellants,

and

Board of Trustees of Anderson County School District Number Five; Ann W. Huitt, Brenda H. Coelz, Joe O. Bolt, Cynthia W. Williford, Carol H. Floyd, as Members of the Board of Trustees Anderson County School District Number Five; and Anderson County School District Number 5, Defendants,

Appeal from the United States District Court for the District of South Carolina

This cause came on to be heard on the record from the United States District Court for the District of South Carolina, ***and was argued by counsel.***

On consideration whereof, it is now here ordered and adjudged by this Court that the

judgement of the said District Court appealed from, in this cause, be, and the same is hereby,

Reversed.

/s/ John M. Greacen

CLERK

APPENDIX B

EMPLOYMENT CONTRACT
BETWEEN
WILLIAM B. ROYSTER
AND THE
GOVERNING BOARD
ANDERSON SCHOOL DISTRICT NUMBER FIVE
OF ANDERSON COUNTY, SOUTH CAROLINA

This Employment Contract, made and entered into this *11th* day of *November, 1980,* and supersedes previous contracts by and between the Governing Board of *Anderson School District Number Five of Anderson County,* hereinafter referred to as DISTRICT, and *William B. Royster,* hereinafter referred to as SUPERINTENDENT. WHEREAS, DISTRICT desires to provide SUPERINTENDENT with a written employment contract in order to enhance administrative stability and continuity within the schools which DISTRICT believes generally improves the quality of its overall educational program; and, WHEREAS, DISTRICT and SUPERINTENDENT believe that a written employment contract is necessary to describe specifically their relationship and to serve as the basis of effective communication between them as they fulfill their goverance and administrative functions in the operation of the educational program of the schools;
NOW, THEREFORE, DISTRICT AND SUPERINTENDENT, for the consideration herein specified, agree as follows:

1. TERM

DISTRICT, in consideration of the promises, herein contained, of SUPERINTENDENT, hereby employs, and SUPERINTENDENT hereby accepts employment as Superintendent of Schools for a term commencing *July 1, 1980,* and ending *June 30, 1982.* DISTRICT may by specific action and with the consent of SUPERINTENDENT extend the termination date of the existing contract.

2. PROFESSIONAL CERTIFICATION AND RESPONSIBILITIES OF SUPERINTENDENT

A. CERTIFICATION. SUPERINTENDENT shall hold a valid certificate issued by the *State of South Carolina.*

B. DUTIES. SUPERINTENDENT shall have charge of the administration of the schools under the direction of the Board. He shall be the chief executive officer of the Board; shall direct and assign teachers and other employees of the schools under his supervision; shall organize, reorganize and arrange the administrative and supervisory staff, including instruction and business affairs, as best serves the DISTRICT subject to the approval of the Board; shall from time to time suggest regulations, rules and procedures deemed necessary for the well ordering of the school district, and in general perform all duties incident to the office of the Superintendent and such other duties as may be prescribed by the Board from time to time. The Board, individually and collectively, shall promptly refer all criticisms, complaints, and suggestions called to its attention to the Superintendent for study and recommendation. The Superintendent shall have the right to attend all Board meetings and all Board and citizen committee meetings, serve as an ex-officio member of all School Board committees and provide administrative recommendations on each item of business considered by each of these groups.

C. OUTSIDE ACTIVITIES. SUPERINTENDENT shall devote his time, attention and energy to the business of the school district. However, he may serve as a consultant to other districts or educational agencies, lecture, engage in writing activities and speaking engagements, and engage in other activities which are of a short-term duration at his discretion. Such activities which require the superintendent to be absent from the school district for more than three consecutive full working days or for a total of five days per annum shall be reported to the Board for approval. In no case will DISTRICT be responsible for any expenses attendant to the performance of such outside activities.

3. PROFESSIONAL GROWTH OF SUPERINTENDENT. DISTRICT encourages the continuing professional growth of SUPERINTENDENT through his participation, as he might decide in light of his responsibilities as SUPERINTENDENT, in:

a) The operations, programs and other activities conducted or sponsored by local, state and national school administrator and school board associations;

b) seminars and courses offered by public or private educational institutions; and

c) informational meetings with other persons whose particular skills or backgrounds would serve to improve the capacity of SUPERINTENDENT to perform his professional responsibilities for DISTRICT.

In its encouragement, DISTRICT shall permit a reasonable amount of release time for SUPERINTENDENT as he deems appropriate, to attend to such matters and pay for the necessary fees for travel and subsistence expenses, as approved by the DISTRICT in the annual budget.

4. COMPENSATION

Salary. DISTRICT shall pay SUPERINTENDENT at an annual salary rate of *Forty-seven Thousand Three Hundred Eighty DOLLARS ($47,380)*. This annual salary rate shall be paid to SUPERINTENDENT in installments of one-twelfth of the annual salary rate on the first day of each month for his services rendered during the preceding month or in accordance with the schedule of salary payments in effect for other certified employees, at the option of SUPERINTENDENT. DISTRICT AND SUPERINTENDENT may mutually agree to adjust the salary of SUPERINTENDENT during the term of his contract, but in no event shall he be paid less than the salary he is presently receiving. Any adjustment in salary made during the life of this contract shall be in the form of an amendment and become part of this contract, but it shall not be deemed that DISTRICT and SUPERINTENDENT have entered into a new contract nor that the termination date of the existing contract has been extended.

5. VACATION AND OTHER BENEFITS

A. SUPERINTENDENT shall be entitled to all the benefits applicable to twelve (12) month administrative employees as are incident to their employment relationship with DISTRICT, including, but not limited to, vacation and illness benefits and leaves, any other forms of insurance

protection, retirement program, choice of tax-sheltered annuities, and other administrative employee benefits.

B. DISTRICT shall pay 100 percent of SUPERINTENDENT'S membership charges to the American Association of School Administrators (currently $125) and the South Carolina Association of School Administrators (currently $140) membership in which the SUPERINTENDENT feels it is necessary to maintain and improve his professional skills, as permitted by State Law and as approved by DISTRICT in the annual budget.

6. AUTOMOBILE ENTITLEMENT

In light of the unique nature of the professional duties of the superintendent of schools, DISTRICT shall provide SUPERINTENDENT with an annual allocation of Three Thousand Dollars ($3,000) for in-district travel expenses in lieu of providing an automobile.

7. PROFESSIONAL LIABILITY

A. DISTRICT agrees that it shall defend, hold harmless, and indemnify SUPERINTENDENT from any and all demands, claims, suits, actions and legal proceedings brought against SUPERINTENDENT in his individual capacity, or in his official capacity as agent and employee of the DISTRICT, provided the incident arose while SUPERINTENDENT was acting within the scope of his employment and excluding criminal litigation and as such liability coverage is within the authority of the school board to provide under State Law. Except that, in no case, will individual board members be considered personally liable for indemnifying SUPERINTENDENT against such demands, claims, suits, actions and legal proceedings.

B. DISTRICT shall not, however, be required to pay any costs of any legal proceedings in the event DISTRICT AND SUPERINTENDENT have adverse interests in such litigation.

8. PERSONAL PROTECTION

In light of the unique nature of the professional duties of superintendent of schools, DISTRICT shall, at its expense, provide protection for the SUPERINTENDENT:

In the event the life or safety of SUPERINTENDENT or his family is threatened or otherwise appears in danger because of the performance of SUPERINTENDENT'S official duties, DISTRICT shall pay reasonable costs incident to the protection of the SUPERINTENDENT and his family. The superintendent can request DISTRICT to pay all or part of the charges. Protection, if required, will be sought first from the regular police authorities.

9. GOALS AND OBJECTIVES

On or prior to the execution of this contract, the parties shall meet to establish DISTRICT goals and objectives for the ensuing school year. Said goals and objectives shall be reduced to writing and be among the criteria by which SUPERINTENDENT is evaluated as hereafter provided. On or prior to *June 30* of each succeeding school year, the parties will meet to establish DISTRICT goals and objectives for the next succeeding school year, in the same manner and with the same effect as heretofore described.

10. EVALUATION

The Board shall evaluate and assess in writing the performance of SUPERINTENDENT at least once a year during the term of this contract. This evaluation and assessment shall be reasonably related to the position description of SUPERINTENDENT and the goals and objectives of the DISTRICT for the year in question. SUPERINTENDENT shall submit to the Board a recommended format for this written evaluation and assessment of his performance within one hundred eighty (180) days of the effective date of this contract. The Board shall meet and discuss the evaluation format with the SUPERINTENDENT, attempting in good faith to agree on the development and adoption of a mutually agreeable evaluation format. In any event, the Board shall adopt an evaluation format within 150 days of the effective date of this contract and shall evaluate the SUPERINTENDENT pursuant thereto within *120 days* prior to the expiration of the first year of the term of his contract.

At least once each fiscal year, DISTRICT and

SUPERINTENDENT shall meet in closed executive session for the purpose of mutual evaluation of the performance of DISTRICT and SUPERINTENDENT. In the event that the Board determines that the performance of the Superintendent is unsatisfactory in any respect, it shall describe in writing, in reasonable detail, specific instances of unsatisfactory performance. The evaluation shall include recommendations as to areas of improvement in all instances where the Board deems performance to be unsatisfactory. A copy of the written evaluation shall be delivered to the SUPERINTENDENT. The SUPERINTENDENT shall have the right to make a written reaction or response to the evaluation. This response shall become a permanent attachment to the SUPERINTENDENT'S personnel file. Within thirty days of the delivery of the written evaluation to the SUPERINTENDENT, the Board shall meet with the SUPERINTENDENT to discuss the evaluation.

11. RENEWAL OF EMPLOYMENT CONTRACT

The Board of Trustees shall review the SUPERINTENDENT'S contract annually at the January meeting of the Board of Trustees and notify the SUPERINTENDENT in writing of any action taken.

12. TERMINATION OF EMPLOYMENT CONTRACT

This employment contract may be terminated by:

A. Mutual agreement of the parties
B. Retirement of SUPERINTENDENT
C. Disability of SUPERINTENDENT

In the event of disability by illness or incapacity, after SUPERINTENDENT'S sick leave has been exhausted, the compensation shall be reinstated after SUPERINTENDENT has returned to employment and undertaken the full discharge of his duties. DISTRICT may terminate this contract by written notice to SUPERINTENDENT at any time after SUPERINTENDENT has exhausted any accumulated sick leave and such employment for whatever cause for an additional continuous period of *thirty work days.* All obligations of DISTRICT shall cease upon such termination.

If a question exists concerning the capacity of

SUPERINTENDENT to return to his duties, DISTRICT may require SUPERINTENDENT to submit to a medical examination, to be performed by a doctor licensed to practice medicine. DISTRICT and SUPERINTENDENT shall mutually agree upon the physician who shall conduct the examination. The examination shall be done at the expense of the DISTRICT. The physician shall limit his report to the issue of whether SUPERINTENDENT has a continuing disability which prohibits him from performing his duties.

D. Discharge for cause

Discharge for cause shall constitute conduct which is seriously prejudicial to DISTRICT, including but not limited to, neglect of duty, or breach of contract. Notice of discharge for cause shall be given in writing and SUPERINTENDENT shall be entitled to appear before the Board to discuss such causes. If SUPERINTENDENT chooses to be accompanied by legal counsel at such meeting, he shall bear any costs therein involved. Such meeting shall be conducted in closed, executive session. SUPERINTENDENT shall be provided a written decision describing the results of the meeting.

13. SAVINGS CLAUSE

If, during the term of this contract it is found that a specific clause of the contract is illegal in federal or state law, the remainder of the contract not affected by such ruling, shall remain in force.

IN WITNESS WHEREOF, DISTRICT has caused this Employment Contract to be approved in his behalf by a duly authorized officer and SUPERINTENDENT has approved this Employment Contract effective on the day and year specified in paragraph 1, above.

SUPERINTENDENT

/s/ William B. Royster

ANDERSON SCHOOL
DISTRICT NUMBER FIVE

By /s/ William M. Burriss
Chairman, Board of Trustees

/s/ Terry M. Neel
Witness 12/9/80

The DISTRICT'S Legal Counsel has reviewed the contract and finds it legally acceptable.

This Employment Contract was approved by vote of the School Board at a public meeting duly held on *November 11, 1980,* and has been made a part of the minutes for that meeting.

AMENDMENT TO
EMPLOYMENT CONTRACT
BETWEEN
WILLIAM B. ROYSTER
AND THE
GOVERNING BOARD OF THE
ANDERSON SCHOOL DISTRICT NUMBER FIVE
OF ANDERSON COUNTY, SOUTH CAROLINA

The contract issued to William B. Royster and approved by the Board of Trustees of Anderson School District Number Five of Anderson County on November 11, 1980, and signed by the chairman on December 9, 1980, has been amended. The following amendments were approved by the Board of Trustees at its regular meeting on Tuesday, September 8, 1981.

Amendment No. 1: The salary of the superintendent shall be increased by seven per cent (7%) effective July 1, 1981, for an annual salary of Fifty Thousand Six Hundred Ninety-seven Dollars ($50,697).

Amendment No. 2: The length of the contract was extended one year beginning July 1, 1982, and ending on June 30, 1983.

SUPERINTENDENT

/s/ William B. Royster

ANDERSON SCHOOL
DISTRICT NUMBER FIVE

By /s/ William M. Burriss
Chairman, Board of Trustees

/s/ Betty S. Grimblis
Witness

9/28/81
Date

SAMPLE CONTRACT

(A Compilation of Provisions for a)
SAMPLE EMPLOYMENT CONTRACT
BETWEEN

_____

AND THE
GOVERNING BOARD OF THE
_____ **SCHOOL DISTRICT**
OF _____

This Employment Contract, made and entered into this _____ day of _____, 19 ____, by and between the Governing Board of the _____ School District of _____, hereinafter referred to as **DISTRICT,** and _____, hereinafter referred to as **SUPERINTENDENT.**

WHEREAS, DISTRICT desires to provide **SUPERINTENDENT** with a written employment contract in order to enhance administrative stability and continuity within the schools which **DISTRICT** believes generally improves the quality of its overall educational program; and, **WHEREAS, DISTRICT** and **SUPERINTENDENT** believe that a written employment contract is necessary to describe specifically their relationship and to serve as the basis of effective communication between them as they fulfill their governance and administrative functions in the operation of the education program of the schools;

NOW, THEREFORE, DISTRICT and **SUPERINTENDENT,** for the consideration herein specified, agree as follows:

1. TERM.
DISTRICT, in consideration of the promises, herein contained, of **SUPERINTENDENT,** hereby employs, and **SUPERINTENDENT** hereby accepts employment as Superintendent of Schools for a term commencing _____, 19 ____, and ending _____, 19 ____.

DISTRICT may by specific action and with the consent of

SUPERINTENDENT extend the termination date of the existing contract to the full extent permitted by state law.

2. PROFESSIONAL CERTIFICATION AND RESPONSIBILITIES OF SUPERINTENDENT.

A. CERTIFICATION. SUPERINTENDENT shall hold a valid certificate issued by the _____.

B. DUTIES. SUPERINTENDENT shall have charge of the administration of the schools under the direction of the Board. He (she) shall be the chief executive officer of the Board; shall direct and assign teachers and other employees of the schools under his (her) supervision; shall organize, reorganize and arrange the administrative and supervisory staff, including instruction and business affairs, as best serves the **DISTRICT** subject to the approval of the Board; shall select all personnel subject to the approval of the Board; shall from time to time suggest regulations, rules and procedures deemed necessary for the well ordering of the school district, and in general perform all duties incident to the office of the Superintendent and such other duties as may be prescribed by the Board from time to time. The Board, individually and collectively, shall promptly refer all criticisms, complaints, and suggestions called to its attention to the Superintendent for study and recommendation. The Superintendent shall have the right to attend all Board meetings and all Board and citizen committee meetings, serve as an ex-officio member of all School Board committees and provide administrative recommendations on each item of business considered by each of these groups.

C. OUTSIDE ACTIVITIES. SUPERINTENDENT shall devote his (her) time, attention and energy to the business of the school district. However, he (she) may serve as a consultant to other districts or educational agencies, lecture, engage in writing activities and speaking engagements, and engage

in other activities which are of a short-term duration at his (her)discretion. Such activities which require the superintendent to be absent from the school district for more than _____ _____ full working days shall be reported to the Board for approval. **SUPERINTENDENT** may at his (her) option, and with the approval of the Board of Education, continue to draw a salary while engaged in the outside activity as described above. In such cases honoraria paid **SUPERINTENDENT** in connection with these activities shall be transferred to the **DISTRICT.** If **SUPERINTENDENT** chooses to use vacation leave to perform outside activities, he (she) shall retain any honoraria paid. In no case will **DISTRICT** be responsible for any expenses attendant to the performance of such outside activities.

3. PROFESIONAL GROWTH OF SUPERINTENDENT.

DISTRICT encourages the continuing professional growth of **SUPERINTENDENT** through his (her) participation, as he (she) might decide in light of his (her) responsibilities as **SUPERINTENDENT,** in:

a. the operations, programs and other activities conducted or sponsored by local, state and national school administrator and school board associations;

b. seminars and courses offered by public or private educational institutions; and

c. informational meetings with other persons whose particular skills or backgrounds would serve to improve the capacity of **SUPERINTENDENT** to perform his (her) professional responsibilities for **DISTRICT.**

In its encouragement, **DISTRICT** shall permit a reasonable amount of release time for **SUPERINTENDENT** as he (she) deems appropriate, to attend such matters and pay for the necessary fees for travel and subsistence expenses, as approved by the District in the annual budget.

4. COMPENSATION.

Salary. **DISTRICT** shall pay **SUPERINTENDENT** at an annual salary rate of _____ **DOLLARS**. This annual salary rate shall be paid to

SUPERINTENDENT in installments of one-twelfth of the annual salary rate on the first day of each month for his (her) services rendered during the preceding month or in accordance with the schedule of salary payments in effect for other certified employees, at the option of **SUPERINTENDENT**.

DISTRICT and **SUPERINTENDENT** may mutually agree to adjust the salary of **SUPERINTENDENT** during the term of this contract, but in no event shall he (she) be paid less than the salary he (she) is presently receiving. Any adjustment in salary made during the life of this contract shall be in the form of an amendment and become part of this contract, but it shall not be deemed that **DISTRICT** and **SUPERINTENDENT** have entered into a new contract nor that the termination date of the existing contract has been extended.

5. **VACATION AND OTHER BENEFITS.**

A. SUPERINTENDENT shall be entitled to all the benefits applicable to twelve (12) month administrative employees as are incident to their employment relationship with **DISTRICT**, including, but not limited to, vacation and illness benefits and leaves, any other forms of insurance protection, retirement program, choice of tax-sheltered annuities, and other adminstrative employee benefits.

B. District shall purchase disability policy naming the superintendent that will provide an income to the superintendent equal to at least fifty (50%) percent of the contractual salary.

C. District shall pay 100 percent of Superintendent's membership charges to the American Association of School Administrators, the _____ Association of School Administrators and these other professional groups, (specific names of groups to be included in this contract) membership in which the Superintendent feels it is necessary to maintain and improve his (her) professional skills, as permitted by State law and as

approved by **DISTRICT** in the annual budget.

6. EXPENSES.

DISTRICT shall pay or reimberse **SUPERINTENDENT** for reasonable expenses approved by **DISTRICT** and incurred by **SUPERINTENDENT** in the continuing performance of his (her) duties under this Employment Agreement and in moving him (her) and his (her) family from _____ to the location of **DISTRICT,** as permitted by State law and as approved by **DISTRICT** in the annual budget.

7. AUTOMOBILE ENTITLEMENT.

In light of the unique nature of the professional duties of the Superintendent of Schools, **DISTRICT** shall provide **SUPERINTENDENT** with an automobile for his (her) business use. The automobile shall be fully maintained by **DISTRICT**, inciuding, but not limited to, keeping the automobile in safe, usable condition, and providing for all expenses incidential to automobile usage.

8. PROFESSIONAL LIABILITY.

A. DISTRICT agrees that it shall defend, hold harmless, and indemnify **SUPERINTENDENT** from any and all demands, claims, suits, actions and legal proceedings brought against **SUPERINTENDENT** in his (her) individual capacity, or in his (her) official capacity as agent and employee of the **DISTRICT,** provided the incident arose while **SUPERINTENDENT** was acting within the scope of his (her) employment and excluding criminal litigation and as such liability coverage is within the authority of the school board to provide under State law. Except that, in no case, will individual board members be considered personally liable for indemnifying **SUPERINTENDENT** against such demands, claims, suits, actions and legal proceedings.

B. If in the good faith opinion of **SUPERINTENDENT**, conflict exists as regards the defense to such claim between the legal position of **SUPERINTENDENT** and the legal position of **DISTRICT**, the **SUPERINTENDENT** may engage counsel in which event **DISTRICT** shall indemnify the **SUPERINTENDENT**

for the costs of legal defense as permitted by State law.

C. DISTRICT shall not however, be required to pay any costs of any legal proceedings in the event **DISTRICT** and **SUPERINTENDENT** have adverse interests in such litigation.

9. MEDICAL EXAMINATION AND PERSONAL PROTECTION. In light of the unique nature of the professional duties of Superintendent of Schools, **DISTRICT** shall, at its expense, provide to **SUPERINTENDENT**:

A. A complete medical examination of **SUPERINTENDENT** not less than once every two years and no more often than once each year. Any report of the medical examination shall be given directly and exclusively by the examining physician to **SUPERINTENDENT**. The District shall be advised in writing by the physician of the continued physical fitness of the Superintendent to perform his (her) duties and such report shall be confidential.

B. In the event the life or safety of **SUPERINTENDENT** or his (her) family is threatened or otherwise appears in danger because of the performance of **SUPERINTENDENT'S** official duties,**DISTRICT** shall pay reasonable costs incident to the protection of the **SUPERINTENDENT** and his (her) family. The superintendent can request district to pay all or part of the charges. Protection, if required, will be sought first from the regular police authorities.

10. GOALS AND OBJECTIVES.
On or prior to the execution of this contract, the parties shall meet to establish **DISTRICT** goals and objectives for the ensuing school year. Said goals and objectives shall be reduced to writing and be among the criteria by which **SUPERINTENDENT** is evaluated as hereafter provided. On or prior to _____ of each succeeding school year, the parties will meet to establish **DISTRICT** goals and objectives for the next succeeding school year, in the same manner and with the same effect as heretofore described.

11. EVALUATION.

The Board shall evaluate and assess in writing the performance of **SUPERINTENDENT** at least once a year during the term of this contract. This evaluation and assessment shall be reasonably related to the position description of **SUPERINTENDENT** and the goals and objectives of the **DISTRICT** for the year in question.

SUPERINTENDENT shall submit to the Board a recommended format for this written evaluation and assessment of his (her) performance within ninety (90) days of the effective date of this contract. The Board shall meet and discuss the evaluation format with the **SUPERINTENDENT**, attempting in good faith to agree on the development and adoption of a mutually agreeable evaluation format. In any event, the Board shall adopt an evaluation format within 150 days of the effective date of this contract and shall evaluate the **SUPERINTENDENT** pursuant thereto within _____ (depends on notification date arrived at in Clause 13 below) prior to the expiration of the first year of the term of this contract.

At least once each fiscal year, **DISTRICT** and **SUPERINTENDENT** shall meet in closed executive session (unless specifically prohibited by state law) for the purpose of mutual evaluation of the performance of **DISTRICT** and **SUPERINTENDENT**. In the event that the Board determines that the performance of the Superintendent is unsatisfactory in any respect, it shall describe in writing, in reasonable detail, specific instances of unsatisfactory performance. The evaluation shall include recommendations as to areas of improvement in all instances where the Board deems performance to be unsatisfactory. A copy of the written evaluation shall be delivered to the **SUPERINTENDENT**. The **SUPERINTENDENT** shall have the right to make a written reaction or response to the evaluation. This response shall become a permanent attachment to the **SUPERINTENDENT'S** personnel file. Within thirty days of the delivery of the written evaluation to the **SUPERINTENDENT**, the Board shall meet with the **SUPERINTENDENT** to discuss the evaluation.

12. RENEWAL OF EMPLOYMENT CONTRACT.

If **DISTRICT** does not notify **SUPERINTENDENT** in writing before _____ that this Employment Contract will not renewed, it shall be deemed that **DISTRICT** has renewed this Employment Contract for

one (1) year extending from the termination date set forth in paragraph 1, above. **SUPERINTENDENT** shall, by certified mail to each member, remind the Board of the existence of this automatic renewal clause. Such notice shall be sent two months prior to the Board meeting where renewal or nonrenewal is to be considered. Failure to mail required notice shall invalidate the automatic renewal clause.

13. TERMINATION OF EMPLOYMENT CONTRACT.

This employment contract may be terminated by:

A. Mutual agreement of the parties.

B. Retirement of **SUPERINTENDENT**.

C. Disability of **SUPERINTENDENT**.

In the event of disability by illness or incapacity, after **SUPERINTENDENT'S** sick leave has been exhausted, the compensation shall be reinstated after **SUPERINTENDENT** has returned to employment and undertaken the full discharge of his (her) duties. **DISTRICT** may terminate this contract by written notice to **SUPERINTENDENT** at any time after **SUPERINTENDENT** has exhausted any accumulated sick leave and such other leave as may be available and has been absent from his (her) employment for whatever cause for an additional continuous period of _____. All obligations of **DISTRICT** shall cease upon such termination.

If a question exists concerning the capacity of **SUPERINTENDENT** to return to his (her) duties, **DISTRICT** may require **SUPERINTENDENT** to submit to a medical examination, to be performed by a doctor licensed to practice medicine. **DISTRICT** and **SUPERINTENDENT** shall mutually agree upon the physician who shall conduct the examination. The examination shall be done at the expense of the **DISTRICT**. The physician shall limit his (her) report to the issue of whether **SUPERINTENDENT** has a continuing disability which prohibits him (her) from performing his (her) duties.

D. Discharge for cause.

Discharge for cause shall constitute conduct which is seriously prejudicial to **DISTRICT**, including but not limited to, neglect of duty, or breach of contract. Notice of discharge for cause shall be given in writing and **SUPERINTENDENT** shall be entitled to appear before the Board to discuss such

causes. If **SUPERINTENDENT** chooses to be accompanied by legal counsel at such meeting, he (she) shall bear any costs therein involved. Such meeting shall be conducted in closed, executive session unless specifically prohibited by State law. **SUPERINTENDENT** shall be provided a written decision describing the results of the meeting.

In the event that the Board offers to terminate the contract by paying the amount specified in Clause 13 (E) below, the requirement of the hearing before the Board shall be waived by the **SUPERINTENDENT**.

E. Unilateral Termination by Board of Education.

The Board may, at its option, and by a minimum of 90 days notice to Superintendent, unilaterally terminate this contract. In the event of such termination the **DISTRICT** shall pay to **SUPERINTENDENT**, as severance pay, all of the aggregate salary he (she) would have earned under this employment contract from the actual date of termination to the termination date set forth in this employment contract or _____ Dollars.

F. Termination with Superintendent's Concurrence.

DISTRICT may propose to terminate this employment contract upon 90 days written notice to **SUPERINTENDENT**. If the **SUPERINTENDENT** concurs in writing with this decision, **DISTRICT** shall pay to the **SUPERINTENDENT**, as serverance pay, all aggregate salary he (she) would have earned under this employment contract from the actual date of termination to the termination date set forth in this employment contract or _____ Dollars. In the event the **SUPERINTENDENT** accepts the settlement specified above, the requirement for a hearing of the reasons for termination in closed executive session before the Board, as provided for in Clause 13 (D) above shall be waived. (The words "not to exceed one full year's compensation" may be added where permitted by state law, at discretion of school board.)

G. Death of **SUPERINTENDENT**.

14. SAVINGS CLAUSE.
If, during the term of this contract it is found that a specific clause of the contract is illegal in federal or state law, the remainder of the contract not affected by such a ruling, shall remain in force.

IN WITNESS WHEREOF, DISTRICT has caused this Employment Contract to be approved in his (her) behalf by a duly authorized officer and **SUPERINTENDENT** has approved this Employment Contract effective on the day and year specified in paragraph 1, above.

SUPERINTENDENT

_____

GOVERNING BOARD OF THE _____ SCHOOL DISTRICT

of _____

by: _____
President (or other officer, as appropriate), Governing Board

Witness

_____

Approval of form and legality by **DISTRICT'S** legal counsel.

This Employment Contract was approved by vote of the School Board at a public meeting duly held on _____ and has been made a part of the minutes for that meeting.

Anderson Independent-Mail
Wednesday, January 12, 1983

ROYSTER RELIEVED OF DUTY

By Kathy Scruggs
Staff Writer

Anderson School District 5 Board of Trustees Tuesday night voted 5-2 to relieve Superintendent William Royster of all "responsibilities, duties and authority as superintendent of School District 5."

By the same margin, the board also appointed H. Wallace Reid, currently McDuffie High School principal, interim superintendent of education of District 5.

The action, to be effective immediately, was taken while the board met for three hours behind closed doors.

The remainder of Royster's $50,697 annual salary and fringe benefits, except for travel expenses, will be paid in monthly installments through his contract termination date of June 30, 1983, according to the board.

Board members declined comment Tuesday night on the reasons behind the decision to relieve Royster.

The past District 5 board voted in September not to renew Royster's contract beyond its June expiration date. And in an October executive session, the board voted to evaluate Royster and reconsider his contract in January as stipulated in the contract.

Royster, who is scheduled for back surgery in Atlanta Friday, was absent from the meeting because he said he was under strict doctors' orders to remain in bed.

He said by telephone Tuesday night he had "turned the matter over to his attorney."

Reid, who is to assume "all duties relinquished by Royster," said he will accept the position as interim superintendent of District 5.

Greenville News
Wednesday, January 12, 1983

District 5 dismisses superintendent Royster

ANDERSON — The Anderson School District 5 board of trustees voted 5-2 late Tuesday night to relieve Superintendent William Royster of his duties and to pay off the remaining five months of his contract.

The trustees appointed McDuffie High School Principal Wallace Reid to serve as acting superintendent, effective immediately.

The action came after a 2½-hour closed-door session after the board's regular meeting.

Royster, who recently was selected as president-elect of the National Association of School Administrators, has been superintendent of Anderson city schools since 1967.

Royster did not attend the meeting and said late Tuesday night he will undergo surgery in Atlanta this week. He said he has turned the matter over to his attorney.

The State
Thursday, January 13, 1983

Anderson School Board Fires Superintendent

From Staff and Wire Reports

ANDERSON

School Superintendent William B. Royster was fired Tuesday night by the Anderson District Five school board after a three-hour, closed-door session.

Board members declined to comment on the action, which was effective immediately. The board agreed to pay the remainder of Royster's $50,000 salary in installments through the end of the fiscal year.

The board selected H. Wallace Reid, currently principal of McDuffie High School, to serve as interim superintendent.

Royster, who is scheduled for back surgery this weekend, did not attend the meeting. He told the *Anderson Independent* that he has turned the matter over to his attorney.

In September, the district board voted not to renew Royster's contract beyond its June 30 expiration date. However, in October the board agreed to evaluate Royster in January before making a final decision.

Royster was recently chosen as president-elect of the American Association of School Administrators and is scheduled to become president in March of 1984. Royster was a candidate for State Superintendent of Education in 1978 but was defeated in the Democratic Party primary by Charlie Williams, who won the post and was re-elected last year.

Anderson Independent-Mail
Sunday, January 16, 1983

District 5 Trustees Told To Stay Mum

From Staff Reports

Hinting at the possibility of being taken to court, District 5 school board members are saying little — at least to the public and press-on the dismissal of Superintendent William Royster.

In a carefully worded statement released Saturday, Board Chairperson Ann Huitt said board attorney Jack McIntosh has advised them not to comment.

"The School District 5 Board of Trustees," the statement said, "issues the following statement regarding the release of Dr. William B. Royster from all duties and responsibilities as superintendent on Tuesday, Jan. 11.

"In the best interest of the school district, the board has been advised by its attorney to make no comment regarding Dr. Royster's release due to the sensitive nature of this matter and the possibility of litigation."

The statement went no further.

During the school board meeting Tuesday, the board emerged from behind closed doors to vote 5-2 to give long-time superintendent Royster his release. The board also named as interim superintendent, former McDuffie High School principal Wallace Reid.

Since then board members have declined to explain their reasons for the dismissal. Saturday's statement is the first time comments have gone beyond "No comment".

The remainder of Royster's $50,697 annual salary and fringe benefits will be paid in monthly installments until the contract's termination date of June 30.

The previous District 5 board voted not to extend Royster's contract past the June date. In October, the board, in another closed session, voted to evaluate Royster and reconsider his contract.

In a previous interview, Royster said he turned the matter over to attorneys. He is recuperating from back surgery in Georgia Baptist Medical Center in Atlanta.